

HOUSE BILL No. 1423

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-1-3; IC 7.1-2-4-24; IC 7.1-3; IC 7.1-5.

Synopsis: Alcoholic beverage issues. Defines "grocery store" for purposes of the alcoholic beverage laws. Allows the alcohol and tobacco commission to renew or transfer ownership of a beer dealer's permit for a beer dealer who: (1) held a permit before July 1, 2007; and (2) does not qualify for a permit as a grocery store under the definition of "grocery store". Requires a local alcoholic beverage board to allow an individual to make oral comments at a public meeting or hearing. Requires a dealer permittee (that is not a package liquor store) to display alcohol in a clearly designated area where the presence of a minor is prohibited without a parent or guardian who is at least 21 years of age. Requires alcoholic beverage sales in a dealer establishment to be rung up by a sales clerk who: (1) has an employee permit; (2) has alcohol server training; and (3) is at least 21 years of age (this is currently the case with package liquor stores). Repeals a provision that makes only employees of package liquor stores receive alcohol server training. (Requires employees of all dealer permittees to receive alcohol server training).

Effective: July 1, 2007.

Pelath, Stutzman

January 16, 2007, read first time and referred to Committee on Public Policy.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1423

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 7.1-1-3-18.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 18.5. (a) "Grocery store" means a store or a part of a store that:**

(1) has the primary North American Industry Classification System (NAICS) classification 445110 or 452910; and

(2) is primarily engaged in the retail sale of a general food line, which may include:

(A) canned and frozen foods;

(B) dry goods, including tea, coffee, sugar, and flour;

(C) fresh fruits and vegetables; and

(D) fresh and prepared meats.

(b) The term does not include a store that has less than two hundred fifty thousand dollars (\$250,000) in annual gross sales of food, excluding the following:

(1) Candy, confectionaries, and chewing gum.

(2) Alcoholic beverages.



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(3) Cocktail mixers.

(4) Soft drinks, sodas, and other similar beverages.

(5) Medicines, tonics, vitamins, and other dietary supplements.

(6) Water (except natural spring water), mineral water, carbonated water, and ice.

(7) Pet food.

(8) Food furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant.

(9) Meals served by a retail merchant off the merchant's premises.

(10) Food sold by a retail merchant who ordinarily bags, wraps, or packages the food for immediate consumption on or near the merchant's premises, including food sold on a "take out" or "to go" basis.

(11) Food sold through a vending machine.

(12) Tobacco products.

SECTION 2. IC 7.1-1-3-40.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 40.5. "Sales clerk" means a person who:**

(1) rings up; or

(2) otherwise records;

an alcoholic beverage sale in the course of the person's employment in a dealer establishment.

SECTION 3. IC 7.1-2-4-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 24. A local board shall allow all individuals attending a public local board meeting or hearing to make oral comments at the meeting or hearing regarding the subject of the meeting or hearing. However, a local board may set a reasonable limit on the amount of time allowed to each individual to provide oral comment.**

SECTION 4. IC 7.1-3-1.5-2, AS ADDED BY P.L.161-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.** As used in this chapter, "dealer permittee" means a person who holds a liquor dealer permit. ~~under IC 7.1-3-10 for a package liquor store.~~

SECTION 5. IC 7.1-3-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3.** (a) The holder of a beer dealer's permit shall be entitled to purchase beer for sale under the permit only from a permittee entitled to sell to a beer dealer under this

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1 title.

2 (b) A beer dealer shall be entitled to possess beer and sell it at retail
3 to a customer in permissible containers only.

4 (c) A beer dealer may not sell beer by the drink nor for consumption
5 on the licensed premises nor shall a beer dealer allow it to be consumed
6 on the licensed premises.

7 (d) Except as provided in subsection (e), a beer dealer shall be
8 entitled to sell beer to a customer and to deliver it in permissible
9 containers to the customer on the licensed premises, or to the
10 customer's residence or office.

11 **(e) This subsection does not apply to a package liquor store.**
12 **Beer shall be displayed in a designated area separated from the**
13 **area where nonalcoholic retail merchandise is displayed. A minor**
14 **may not enter the designated area without a parent or guardian**
15 **who is at least twenty-one (21) years of age. The designated area**
16 **shall be monitored by an employee who, as part of the employee's**
17 **job responsibilities, shall ensure that a minor does not enter the**
18 **designated area without a parent or guardian who is at least**
19 **twenty-one (21) years of age. A sales clerk who rings up or**
20 **otherwise records a sale of beer must be at least twenty-one (21)**
21 **years of age.**

22 (f) A beer dealer shall not be entitled to sell and deliver beer on the
23 street or at the curb outside the licensed premises, nor shall a beer
24 dealer be entitled to sell beer at a place other than the licensed
25 premises. A beer dealer shall not be entitled to sell beer and deliver
26 beer for carry-out, or for delivery to a customer's residence or office, in
27 a quantity that exceeds eight hundred sixty-four (864) ounces in a
28 single transaction. However, notwithstanding IC 7.1-5-10-11, a beer
29 dealer who is licensed pursuant to IC 7.1-3-10-4 shall be entitled to sell
30 and deliver warm or cold beer for carry-out, or for delivery to a
31 customer's residence, office, or a designated location in barrels or other
32 commercial containers that do not exceed two thousand sixteen (2,016)
33 ounces per container. This delivery may only be performed by the
34 permit holder or an employee who holds an employee permit. The
35 permit holder shall maintain a written record of each delivery for at
36 least one (1) year that shows the customer's name, location of delivery,
37 and quantity sold.

38 ~~(e)~~ (g) Unless a beer dealer is a grocery store or drug store, a beer
39 dealer may not sell or deliver alcoholic beverages or any other item
40 through a window in the licensed premises to a patron who is outside
41 the licensed premises. A beer dealer that is a grocery store or drug store
42 may sell any item except alcoholic beverages through a window in the

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licensed premises to a patron who is outside the licensed premises.

SECTION 6. IC 7.1-3-5-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4. Notwithstanding IC 7.1-1-3-18.5, the commission may renew or transfer ownership of a beer dealer's permit for a beer dealer who:**

(1) held a permit before July 1, 2007; and

(2) does not qualify for a permit as a grocery store under IC 7.1-1-3-18.5.

SECTION 7. IC 7.1-3-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) The holder of a liquor dealer's permit shall be entitled to purchase liquor only from a permittee entitled to sell to a liquor dealer under this title.

(b) A liquor dealer shall be entitled to possess liquor and sell it at retail in its original package, to a customer only for consumption off the licensed premises.

(c) This subsection does not apply to a package liquor store. Liquor shall be displayed in a designated area separated from the area where nonalcoholic retail merchandise is displayed. A minor may not enter the designated area without a parent or guardian who is at least twenty-one (21) years of age. The designated area shall be monitored by an employee who, as part of the employee's job responsibilities, shall ensure that a minor does not enter the designated area without a parent or guardian who is at least twenty-one (21) years of age. A sales clerk who rings up or otherwise records a sale of liquor must be at least twenty-one (21) years of age.

~~(c)~~ **(d)** A liquor dealer may deliver liquor only in permissible containers to a customer's residence or office in a quantity that does not exceed twelve (12) quarts at any one (1) time. However, a liquor dealer who is licensed under IC 7.1-3-10-4 may deliver liquor in permissible containers to a customer's residence, office, or designated location. This delivery may only be performed by the permit holder or an employee who holds an employee permit. The permit holder shall maintain a written record of each delivery for at least one (1) year that shows the customer's name, location of delivery, and quantity sold.

~~(d)~~ **(e)** A liquor dealer may not sell or deliver alcoholic beverages or any other item through a window in the licensed premises to a patron who is outside the licensed premises. However, a liquor dealer that is a drug store may sell prescription drugs and health and beauty aids through a window in the licensed premises to a patron who is outside the licensed premises.

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SECTION 8. IC 7.1-3-15-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) The holder of a wine dealer's permit shall be entitled to purchase wine only from a permittee who is authorized to sell to a wine dealer under this title. A wine dealer shall be entitled to sell wine, for consumption off the licensed premises only and not by the drink.

(b) This subsection does not apply to a package liquor store. Wine shall be displayed in a designated area separated from the area where nonalcoholic retail merchandise is displayed. A minor may not enter the designated area without a parent or guardian who is at least twenty-one (21) years of age. The designated area shall be monitored by an employee who, as part of the employee's job responsibilities, shall ensure that a minor does not enter the designated area without a parent or guardian who is at least twenty-one (21) years of age. A sales clerk who rings up or otherwise records a sale of wine must be at least twenty-one (21) years of age.

~~(b)~~ (c) A wine dealer shall be entitled to sell wine in permissible containers in a quantity of not more than three (3) standard cases, as determined under the rules of the commission, in a single transaction. However, a wine dealer who is licensed under IC 7.1-3-10-4 may possess wine and sell it at retail in its original package to a customer only for consumption off the licensed premises.

~~(c)~~ (d) Unless a wine dealer is a grocery store or drug store, a wine dealer may not sell or deliver alcoholic beverages or any other item through a window in the licensed premises to a patron who is outside the licensed premises. A wine dealer that is a grocery store or drug store may sell any item except alcoholic beverages through a window in the licensed premises to a person who is outside the licensed premises.

~~(d)~~ (e) However, a wine dealer who is licensed under IC 7.1-3-10-4 may deliver wine only in permissible containers to a customer's residence, office, or designated location. This delivery may only be performed by the permit holder or an employee who holds an employee permit. The permit holder shall maintain a written record of each delivery for at least one (1) year that shows the customer's name, location of delivery, and quantity sold.

SECTION 9. IC 7.1-3-18-9, AS AMENDED BY P.L.165-2006, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) **Except as provided in subsection (j),** the commission may issue an employee's permit to a person who desires to act as:

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(1) a sales clerk in a package liquor store, a dealer establishment;

(2) an employee who serves wine at a farm winery; or

(3) a bartender, waiter, waitress, or manager in a retail establishment. ~~excepting dining car and boat employees.~~

(b) A permit authorized by this section is conditioned upon the compliance by the holder with reasonable rules relating to the permit which the commission may prescribe from time to time.

(c) A permit issued under this section entitles its holder to work for any lawful employer. However, a person may work without an employee's permit for thirty (30) days from the date shown on a receipt for a cashier's check or money order payable to the commission for that person's employee's permit application.

(d) A person who, for a package liquor store or retail establishment, is:

(1) the sole proprietor;

(2) a partner, a general partner, or a limited partner in a partnership or limited partnership that owns the business establishment;

(3) a member of a limited liability company that owns the business establishment; or

(4) a stockholder in a corporation that owns the business establishment;

is not required to obtain an employee's permit in order to perform any of the acts listed in subsection (a).

(e) An applicant may declare on the application form that the applicant will use the employee's permit only to perform volunteer service that benefits a nonprofit organization. It is unlawful for an applicant who makes a declaration under this subsection to use an employee's permit for any purpose other than to perform volunteer service that benefits a nonprofit organization.

(f) The commission may not issue an employee's permit to an applicant while the applicant is serving a sentence for a conviction for operating while intoxicated, including any term of probation or parole.

(g) The commission may not issue an employee's permit to an applicant who has two (2) unrelated convictions for operating while intoxicated if:

(1) the first conviction occurred less than ten (10) years before the date of the applicant's application for the permit; and

(2) the applicant completed the sentence for the second conviction, including any term of probation or parole, less than two (2) years before the date of the applicant's application for the

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1 permit.

2 (h) If an applicant for an employee's permit has at least three (3)
3 unrelated convictions for operating while intoxicated in the ten (10)
4 years immediately preceding the date of the applicant's application for
5 the permit, the commission may not grant the issuance of the permit.
6 If, in the ten (10) years immediately preceding the date of the
7 applicant's application the applicant has:

8 (1) one (1) conviction for operating while intoxicated, and the
9 applicant is not subject to subsection (f); or

10 (2) two (2) unrelated convictions for operating while intoxicated,
11 and the applicant is not subject to subsection (f) or (g);
12 the commission may grant or deny the issuance of a permit.

13 (i) The commission shall revoke a permit issued to an employee
14 under this section if:

15 (1) the employee is convicted of a Class B misdemeanor for
16 violating IC 7.1-5-10-15(a); or

17 (2) the employee is convicted of operating while intoxicated after
18 the issuance of the permit.

19 The commission may revoke a permit issued to an employee under this
20 section for any violation of this title or the rules adopted by the
21 commission.

22 **(j) This section does not apply to a dining car, boat, or airline**
23 **employee.**

24 SECTION 10. IC 7.1-5-6-3 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) It is unlawful for
26 a person to act as a clerk in a package liquor store; or as a bartender;
27 waiter, waitress, or manager for a retailer permittee in a position that
28 is listed in IC 7.1-3-18-9(a) unless that person has applied for and
29 been issued the appropriate an employee's permit. This section does
30 not apply to dining car or boat employees or to a person described in
31 IC 7.1-3-18-9(d).

32 (b) It is a defense to a charge under this section if, within thirty (30)
33 days after being cited by the commission, the person who was cited
34 produces evidence that the appropriate permit was issued by the
35 commission on the date of the citation.

36 (c) It is a defense to a charge under this section for a new applicant
37 for a permit if, within thirty (30) days after being cited by the
38 commission, the new applicant who was cited produces a receipt for a
39 cashier's check or money order showing that an application for the
40 appropriate permit was applied for on the date of the citation.

41 **(d) It is a defense to a charge under this section that the person**
42 **who was cited:**

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(1) acted as a dining car, boat, or airline employee; or

(2) is a person described in IC 7.1-3-18-9(d).

SECTION 11. IC 7.1-5-7-13, AS AMENDED BY P.L.161-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. Section 12 of this chapter does not prohibit the following:

(1) The employment of a person at least eighteen (18) years of age but less than twenty-one (21) years of age on or about licensed premises where alcoholic beverages are sold, furnished, or given away for consumption either on or off the licensed premises, for a purpose other than:

- (A) selling;
- (B) furnishing, other than serving;
- (C) consuming; or
- (D) otherwise dealing in;

alcoholic beverages.

(2) A person at least eighteen (18) years of age but less than twenty-one (21) years of age from ringing up a sale of alcoholic beverages in the course of the person's employment **in a dining area or family room of a restaurant or hotel.**

(3) A person at least nineteen (19) years of age but less than twenty-one (21) years of age who:

- (A) has successfully completed an alcohol server training program certified under IC 7.1-3-1.5; and
- (B) serves alcoholic beverages in a dining area or family room of a restaurant or hotel:
 - (i) in the course of a person's employment as a waiter, waitress, or server; and
 - (ii) under the supervision of a person who is at least twenty-one (21) years of age, is present at the restaurant or hotel, and has successfully completed an alcohol server training program certified under IC 7.1-3-1.5 by the commission.

This subdivision does not allow a person at least nineteen (19) years of age but less than twenty-one (21) years of age to be a bartender.

SECTION 12. IC 7.1-5-10-23 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 23. (a) It is unlawful for a person who is the proprietor of a package liquor store, drug store, or grocery store to allow a purchaser of alcoholic beverages, or any other person who is not a sales clerk, to ring up or otherwise**

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- 1 record an alcoholic beverage sale.
2 (b) It is unlawful for a purchaser of alcoholic beverages, or any
3 other person who is not a sales clerk, to ring up or otherwise
4 record an alcoholic beverage sale in a:
5 (1) drug store;
6 (2) grocery store; or
7 (3) package liquor store.

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